IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 60 of 1983

Hon'ble MR.JUSTICE S.M.SONI and

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME TAX

Versus

GUJARAT INDUSTRIAL INVESTMENT CORP. LTD.

Appearance:

MR. P.K. JANI FOR MR MANISH R BHATT for Petitioner

SERVED for Respondent No. 1

CORAM : MR.JUSTICE S.M.SONI and

MR.JUSTICE Y.B.BHATT

Date of decision: 27/09/96

ORAL JUDGEMENT(Per S.M. Soni J.)

1. The assessee in the present Reference is a public limited company. The assessment year under reference is 1975-76.

2. The Income Tax Officer (ITO for short), at the time of passing the assessment order, allowed deduction as claimed by the Company under section 36(1)(viii) of the Income Tax Act, 1961 ('the said Act' for short), on the basis that the deduction was to be computed before making deduction under section 36(1)(viii) of the said Act. The Commissioner of Income Tax, Ahmedabad, on perusal of the record, was of the opinion that the order passed by the ITO was erroneous and prejudical to the interests of the revenue. He, therefore, issued suo motu notice calling upon the assessee as to why the deduction so allowed by the ITO should not be withdrawn. The Commissioner of Income Tax, after hearing the Assessee, came to the conclusion that the aforesaid deduction was wrongly allowed to the assessee.

3. The assessee, being aggrieved by the order passed by the Commissioner of Income Tax, took the matter before the Income-Tax Tribunal. Before the Tribunal it was contended by the assessee that the order of ITO was neither erroneous nor prejudicial to the interests of the revenue. In support of its case the assessee relied upon a decision of the Tribunal in an identical matter in the case of assessee -Gujarat State Financial Corporation. The say of the revenue before the Tribunal was that the judgement in the case of Gujarat State Financial Corporation was not accepted by the Department and a reference has been made before the High Court. The Tribunal, however, relying on that decision held that the order passed by the Commissioner of Income Tax was not correct, and therefore set aside the impugned order by order dated 18th September 1981.

4. Under the aforesaid circumstances at the instance of the Revenue, the following question is referred to us in this Reference for our opinion:

> "Whether, on the facts and in the circumstances of the case, the Tribunal was right in coming to the conclusion that deduction under section 36(1)(viii) of the Act was to be computed at 40% of the total income straightaway, and not at 40% of the total income less deduction due under the said provisions?"

5. The question referred to us, in our opinion, is squarely covered by the decision in the case of C.I.T. Vs. Gujarat State Finance Corporation, reported in 196 ITR page 822. Even the facts of that case are strikingly similar to that of the present case. In the case of Gujarat State Finance Corporation (supra) the question

was whether deduction under section 36(1)(vii) of the said Act was to be computed at 40% of the total income straightaway or after deduction under this clause and Chapter VIA. The words "this clause" were not there in the section in the year 1975-76. However, we are concerned with whether deduction at the rate of 40% should be of the total income before making any deduction under Chapter VIA. This court in the case of Gujarat State Finance Corporation (Supra) has held in substance as under:

"The opening part of section 2 of the Income-tax Act, 1961, which contains various definitions clearly provides that, unless the context otherwise requires, different words and expressions will have the meanings given in that section. It is not possible to read the expression "total income" used in section 36(1)(viii) to mean total income computed in accordance with the provisions contained in sections 30 to 43A, as provided in section 29, so as also to take into account deductions admissible under section 36(1)(viii). Since section 36(1)(viii) itself provides that the total income for the purpose of the said provision is total income before the deductions under chapter VIA, it would mean that, for the purpose of working out deduction under that provision, the total income would be the total income before deductions (1) under Chapter VIA, and (2) under that provision [section 36(1)(viii)]. What was implicit in section 36(1)(viii) has now been made explicit by the subsequent amendment of the said clause (viii) with effect from April 1, 1985."

Thus, the question referred to this court by this reference is answered by the judgement in the case of Gujarat State Finance Corporation (supra). We, therefore, need not discuss the matter in detail again.

6. In the result we answer the question which has been referred to us in the affirmative in favour of the assessee. Reference is answered accordingly with no order as to costs.

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